IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2003

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE S.R.SINGHARAVELU

T.C.No.68 of 2000

The Salem Co-operative Sugar
Mills Ltd.,
Mohanur-637 015. ..Petitioner

-Vs-

The Commissioner of Income Tax,
Coimbatore. ..Respondents

Tax Case reference under Sec.256 (2) of the Income-tax Act, 1961,
against the order of the Income-tax Appellate Tribunal, 'C' Bench, Madras,
dated 25.09.1998, made in R.A.No.450/Mds of 1998 in ITA No.1757/ Mds/91.

!For petitioner : Mr.P.P.S.Janarthanaraja

^For respondent : Mr.K.Subramaniam
Sr. Standing Counsel for
I.T.Department.

:ORDER

(The order of the Court was made
by R.JAYASIMHA BABU, J.)

The question referred at the instance of the Revenue is as to whether the Tribunal was right in restoring the order of the assessing officer in disallowing the Provident Fund contribution amounting to Rs.1,47,584/- and administrative charges of Rs.12,310/- under section 43B (b) of the Act thereby reversing the order of the first appellate authority. The assessment year is 1988-89.

2. It is not in dispute that the amounts referred to in the question were paid before the due date as defined in the explanation below Clause (va) of sub-section (1) of Section 36 of the Act.

3. The assessing officer denied the deduction claimed, on the sole ground that the payment had not been made in the previous year although the

payment had been made before the due date, the actual payment having been made after the close of the previous year. That view of the assessing officer has been affirmed by the Tribunal by reversing the order of the Commissioner, who had accepted the assessee's appeal.

4. The Supreme Court in the case of Allied Motors Pvt. Ltd. v. Commissioner of Income Tax (224 ITR 677) considered the effect of the addition of the first proviso to Section 43B by the Finance Act 1987, and held the same to be retrospective in operation. While so holding, the Court examined the history of Section 43B which had been introduced with effect from 1.4.1984. It noticed the contents of the memorandum explaining the provisions of the Finance Bill 1983 wherein it had been stated inter alia that Section 43B was aimed at curbing the practice of assessees not paying the taxes and not discharging their liabilities to pay employer's contribution to provident fund etc. and still claiming deduction under the Income Tax Act on the ground that the liability had occurred in the relevant previous year and therefore "it was proposed to provide that deduction for any sum payable by the assessee by way of tax or duty under any law for the time being in force (irrespective of whether such tax or duty is disputed or not) or any sum payable by the assessee as an employer by way of contribution to any provident fund, or superannuation fund or gratuity fund or any other fund for the welfare of employees shall be allowed only in computing the income of that previous year in which such sum is actually paid by him". The Court held that "Section 43B was, therefore, clearly aimed at curbing the activities of those taxpayers, who did not discharge their statutory liability of payment of excise duty, employer's contribution to provident fund, etc., for long periods of time but claimed deductions in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in the relevant previous years. It was to stop this mischief that section 43B was inserted."

5. The Court went on to hold that "it was clearly not realised that the language in which section 43B was worded, would cause hardship to those taxpayers who had paid sales tax within the statutory period prescribed for this payment, although the payment so made by them did not fall in the relevant previous year. This was because the sales tax collected pertained to the last quarter of the relevant accounting year. It could be paid only in the next quarter which fell in the next accounting year. Therefore, even when the sales tax had in fact been paid by the assessee within the statutory period prescribed for its payment and prior to the filing of the income tax return, these assessees were unwittingly prevented from claiming a legitimate deduction in respect of the tax paid by them. This was not intended by Section 43B. Hence, the first provisio was inserted in section 43B. The amendment which was made by the Finance Act of 1987 in section 43B by inserting, inter alia, the first proviso, was remedial in nature, designed to eliminate unintended consequences which may cause undue hardship to the assessee and which made the provision unworkable or unjust in a specific situation."

6. What has been said by the Court in relation to sales tax is equally true in respect of the contributions which the employers were required to make to provident fund and which amount was paid by such employer within

the due date specified under the Employees Provident Fund Act, even though the actual date of payment may have been on the day subsequent to the close of the relevant previous year.

7. In that case of Allied Motors, the Supreme Court quoted with approval the words of Judge Learned Hand and observed that "one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning". The Court thereafter held that "a proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole."

8. The object of Section 43B was to ensure that the deduction claimed was in relation to an amount which had in fact been paid by the assessee and that the payment that is required to be made is made within the time allowed by the law. It would be clearly unjust to disallow deduction of such payment in the assessment of the income of the assessee. This injustice was realised by the Parliament itself which deleted the reference to 'the previous year' in the second proviso. The object that was accomplished by the amendment was to give effect to the true intention behind the introduction of the section. That amendment is, therefore, required to be regarded as retrospective and as being applicable to the assessment year 1988-89 as well.

9. This Court has held so in the decisions reported in Commissioner of Income Tax v. Shri Ganapathy Mills Co. Ltd. (243 ITR 879) and Commissioner of Income Tax v. Salem Co-operative Spinning Mills Ltd. (258 ITR 360). We are unable to accept the submission made by the counsel for the Revenue that Parliament had a different intention so far as payments of amounts due under the Employees Provident Fund Act was concerned and that it had intended to treat that amount differently from the amount of tax which the assessees were required to pay. We find no support whatsoever for this submission either in the memorandum or in any other document. When Section 43B was introduced all that was sought to be ensured was that the statutory liabilities are to be given deduction to only if they had been discharged by actual payment.

10. We, therefore, answer the question referred to us in favour of the assessee and against the Revenue.

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan,
III Floor, Besant Nagar,
Madras-90. (with records) (5 copies)

2.The Secretary,
Central Board of Revenue,
New Delhi. (3 copies)

3.The Commissioner of Income Tax,
Coimbatore.

4.The Deputy Commissioner of Income-tax,
(Appeals), Coimbatore.

5.The Deputy Commissioner of Income Tax,
Special Range-I,
Coimbatore.

6.The Deputy Commissioner of Income Tax,
Special Range, Salem.

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